

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MARY BOLLOCK, Plaintiff, VS. BOYDS' GUNSTOCK INDUSTRIES, INC., Defendant.	 Civil Case No. <u>19-4048</u> COMPLAINT (Jury Trial Demanded)
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COMES NOW Plaintiff Mary Bollock, and for her Complaint against Defendant Boyds' Gunstock Industries, Inc., states and alleges as follows:

PARTIES

- 1) Plaintiff Mary Bollock ("Bollock") is an adult resident of Davison County, South Dakota.
- 2) Bollock was born in 1959 and was within the statutorily protected age group at all times relevant to this Complaint.
- 3) Defendant Boyds' Gunstock Industries, Inc. ("Boyds") is a South Dakota corporation doing business selling gunstocks and related items in Davison County, South Dakota.
- 4) Boyds employs more than 20 people.

JURISDICTION AND VENUE

- 5) This an employment discrimination and retaliation action arising under the Age Discrimination in Employment Act of 1967 ("the ADEA"), codified at 29 U.S.C. § 623(a), as amended by the Older Workers Benefits Act of 1990 and the Civil Rights Act of 1991.
- 6) Boyds is an employer within the meaning of and is subject to the ADEA.
- 7) At all times relevant to this Complaint, Bollock was employed by Boyds in its Davison

County place of business.

8) On or around December 4, 2018, the EEOC issued a Notice of Right to Sue to Bollock.

9) This Court has subject matter jurisdiction over the Plaintiff's discrimination and retaliation claims pursuant to 29 U.S.C. § 626 and 28 U.S.C. §§ 1331.

10) This Court has personal jurisdiction over the Defendant because it is a South Dakota corporation doing business in South Dakota and the events giving rise to these claims occurred in South Dakota.

11) Venue is proper in accordance with 28 U.S.C. § 1391(b) because both the parties reside or are located in the District and because the events giving rise to these claims occurred in this District.

GENERAL ALLEGATIONS

12) Beginning in March 2015, Boyds employed Bollock as a marketing manager in its Marketing Division.

13) Bollock's direct supervisor was Dustin Knutson. Knutson is substantially younger than Bollock.

14) Bollock performed her job in the manner expected by her employer.

15) In approximately May 2017, Boyds gave Bollock a \$3000.00 raise.

16) During her employment, Knutson repeatedly harassed Bollock and treated her worse than similarly situated employees who are younger than Bollock in an attempt to force Bollock to quit.

17) During her employment, Knutson expressed his animus toward employees of Bollock's age and generation in the presence of other employees in a way that was designed to humiliate Bollock, to undermine Bollock's job performance and to ostracize her from her

co-workers, including the following:

- a. Knutson made generational jokes about Bollock's age in an attempt to get employees to join him in ridiculing Bollock;
- b. Knutson would say "That sounds like something my mother would say" as a means of suggesting to Bollock and her co-workers that Bollock was too old to understand modern technology;
- c. Knutson referred to Bollock by referencing her gray hair;
- d. Knutson referred to Bollock and the only other woman in the protected age group at a meeting as "the grannies"; and
- e. Knutson asked Bollock to show two younger employees her "random old lady whisker that all old ladies get."

18) Approximately two months after receiving a raise for performance, Bollock discovered that Knutson was advertising her position online as an open position.

19) Bollock asked Knutson why her job was posted as an open position and Knutson stated that he had posted her job because she had allegedly failed to provide him with a proposed marketing plan. Bollock responded by submitting a proposed marketing plan to Knutson. Knutson accepted the marketing plan but chided Bollock about waiting to submit it until she saw her job position advertised. When Bollock pointed out to Knutson that she had originally presented the same marketing plan to him in 2016, Knutson ignored Bollock.

20) In July 2017, Bollock was demoted and replaced by a younger, less experienced employee. Bollock was required to train her replacement and was held responsible for some of her replacement's duties.

- 21) Bollock reported Knutson's discriminatory conduct to her co-workers and to Boyds' human resources ("HR") manager several times, including in August 2016, April 2017, August 2017 and October 2017.
- 22) In response to Bollock's report, Boyds' HR manager Becky Gillen acknowledged that Bollock's age discrimination reports were upsetting, and Gillen told Bollock that Knutson wanted a "thirty-something company."
- 23) To the best of Bollock's knowledge, Boyds did not investigate or take remedial action as a result of any of Bollock's age discrimination reports to Boyds' HR department.
- 24) In late October 2017, Knutson called a meeting with Bollock and reduced her wage and removed her from exempt status.
- 25) On November 10, 2017, Bollock went to Randy Boyd to report her complaints about the harassing and discriminatory behavior that Knutson was inflicting on her. Bollock told Boyd that she was being targeted and harassed by Knutson.
- 26) Boyd, the founder and president of Boyds, responded to Bollock's report of discriminatory treatment by telling Bollock that he did not get involved in that "stuff" anymore and that his role was to make sure that Boyds was profitable.
- 27) Within a week after her meeting with Randy Boyd, Knutson delivered a final written warning to Bollock even though Bollock had no prior disciplinary actions in her personnel file.
- 28) When he issued the final written warning, Knutson also announced that he would no longer be supervising Bollock. Bollock was demoted to a different job assigned and Knutson assigned her to a supervisor who was located in Arizona.
- 29) Bollock was required to provide her supervisor with a detailed, hourly documentation of

her daily work activities.

30) Bollock discovered that Knutson was surreptitiously trailing and photographing Bollock at work even though he was no longer supposed to be supervising her.

31) To the best of her knowledge, no other similarly situated employee was subjected to the level of scrutiny that Bollock was.

32) When Bollock complained to the HR manager that she felt she was being subject to special scrutiny as retaliation for her discrimination report to Randy Boyd, Gillen again acknowledged that Knutson “always dogs you.”

33) To the best of Bollock’s knowledge, Boyds did not investigate or take remedial action relative to Bollock’s discrimination and retaliation report.

34) In December 2017, Boyds reduced Bollock’s Christmas bonus from \$3000.00 to approximately \$600.00. To the best of her knowledge, she was the only similarly situated employee whose bonus was reduced.

35) On January 3, 2018, Bollock submitted a resignation letter because she was no longer able to tolerate her hostile work environment. She was constructively discharged as a result.

COUNT I: VIOLATION OF THE ADEA
(Age Discrimination in Employment)

36) Plaintiff incorporates Paragraphs 1-35 above.

37) At all times relevant to this Complaint, Bollock was an employee within the protected age group for the purposes of the ADEA.

38) Bollock was qualified for her position with Boyds.

39) During the course of her employment, Bollock was subject to severe and pervasive harassment because of her age, which created a hostile, intimidating and offensive work

environment.

40) During the course of her employment, Bollock was subject to more difficult performance standards, harsher disciplinary actions, different pay for similar work, and stricter supervisory scrutiny than similarly situated younger workers.

41) The reason Bollock was subject to harassment and harsher terms and conditions of employment was because of her age and her supervisor's desire to have a thirty-something workplace.

42) Bollock was demoted and replaced by a substantially younger worker.

43) Bollock's job duties, wages and benefits were reduced as compared to similarly situated younger workers.

44) The harassment she suffered at work affected Bollock's performance and her co-worker's willingness to associate with and work collaboratively with her.

45) Bollock was constructively discharged from her employment because of Boyd's hostile work environment and because of the discriminatory terms and conditions of her employment.

46) Boyds knew or should have known of the hostile work environment created by its supervisor.

47) Boyds knew or should have known of the discriminatory treatment that Bollock was subjected to by or under the direction of Dustin Knutson.

48) Boyds' proffered reasons for its adverse pay, benefits and job assignment decisions regarding Bollock's employment are pretextual.

49) Boyds failed to follow its age discrimination policies and acted in violation of the ADEA.

50) To the best of Bollock's knowledge, she was not the only Boyds employee who was

subject to discriminatory terms and conditions of employment because of protected category status at Boyds.

51) As a direct and proximate result of Boyds' hostile work environment and discriminatory treatment because of her age, Bollock suffered a loss of wages and employment-related benefits and will continue to suffer a loss of future wages and employment-related benefits.

52) Boyds' violations of the ADEA via its adverse employment actions against Bollock were willful and intentional.

COUNT I: VIOLATION OF THE ADEA
(Age Discrimination in Employment -- Retaliation)

53) Plaintiff reasserts and realleges her allegations in Paragraphs 1-52 above.

54) Between 2016 and November 2017, Bollock repeatedly reported discriminatory treatment based on age to Boyds' HR manager and to its owner.

55) Bollock was engaged in protected activity when she opposed and reported incidents of age-related harassment, age discrimination and retaliation by her Boyds' supervisor.

56) Boyds, primarily through its general manager Dustin Knutson, subjected Bollock to retaliation for complaining of age discrimination in employment.

57) To the best of Bollock's knowledge, Boyds did not investigate or take appropriate remedial action to address her reports of discrimination and retaliation.

58) Within period of approximately two months after Bollock reported discrimination to Boyds' president, Bollock had been reassigned to a remote supervisor, was subject to harsher scrutiny by Dustin Knutson and had her annual Christmas bonus significantly reduced.

59) Boyds' proffered reasons for its adverse job duty assignments and its wage and benefits

decisions regarding Bollock's employment are pretextual.

60) Boyds knew or should have known of the retaliatory treatment that Bollock was subjected to by or under the direction of Dustin Knutson.

61) Bollock was constructively discharged from a job that she was qualified for because of the company's retaliatory response to her protected activity.

62) As a direct and proximate result of her protected activities, Bollock suffered a loss of wages and employment-related benefits, a negative alteration of the terms and conditions of her employment, and she will continue to suffer a loss of future wages and employment-related benefits in the future.

63) Boyds' violations of the ADEA via its retaliatory adverse employment actions against Bollock were willful and intentional.

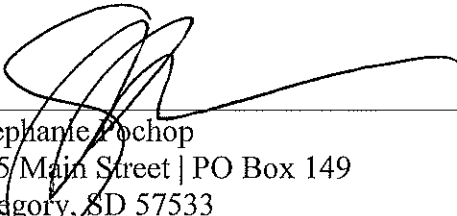
REQUESTS FOR RELIEF

THEREFORE Plaintiff Mary Bollock requests and prays for judgment against Defendant Boyds' Gunstock Industries, Inc. as follows:

- 1) For monetary damages in excess of \$75,000 to compensate her for all special and general damages as allowed by the ADEA;
- 2) For her reasonable attorney fees, costs, disbursements and expenses incurred in the pursuit of this matter as allowed by the ADEA;
- 3) For liquidated damages as allowed by the ADEA;
- 4) For a trial by jury; and
- 5) For such other and further equitable relief as the Court may deem just and appropriate.

Dated this 1st day of March, 2019.

JOHNSON POCHOP & BARTLING



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Stephanie@Rosebudlaw.com
Attorney for Plaintiff Mary Bollock

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mary Bollock
40302 250th Str.
Mitchell, SD 57301

(b) County of Residence of First Listed Plaintiff Davison County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephanie E. Pochop
405 Main Street | PO Box 149
Gregory, SD 57533- (605) 269-0665

DEFENDANTS

Boyd's Gunstock Industries Inc.
25376 403rd Avenue
Mitchell, SD 57301

County of Residence of First Listed Defendant Davison, County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 626 (ADEA)

Brief description of cause:

Age discrimination and retaliation in employment violation of federal law.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
03/01/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE